

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILO WALLACE,

Petitioner,

v.

UNKNOWN,

Respondent.

No. 2:21-cv-00927 TLN DB P

ORDER TO SHOW CAUSE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

AMENDED PETITION

On June 1, 2021, the court dismissed petitioner's petition with leave to amend for failure to comply with Rule 2(c) of the Rules Governing § 2254 Cases. (ECF No. 3.) Petitioner was advised that, in order to comply with Rule 2(c), any amended petition must be on the form used by this court for actions brought under § 2254. (Id. at 1.) Petitioner was given thirty days to file an amended petition. (Id. at 2.)

Thirty days have passed and petitioner has not filed an amended petition on the form used by this court, requested additional time to file an amended petition, or otherwise responded to the court's order that petitioner file an amended petition. Petitioner will be ordered to either dismiss this action or file an amended petition within thirty days. Petitioner is warned that failure to comply with this order will result in a recommendation that this action be dismissed.

JUNE 10, 2021 REQUEST BY PETITIONER

On June 10, 2021, petitioner filed a request with the court in which he asks that a District Judge be assigned to this case. (ECF No. 4.) A District Judge has already been assigned as the presiding judge in this action. (ECF No. 6.) Petitioner also requests that he be brought to court “to be heard in person.” (ECF No. 4.) As there is presently no operative petition in this action, the court cannot make any determinations as to whether a hearing would be appropriate. Petitioner must first file an amended petition in order for the court to be able to consider any such request. Accordingly, this request will be denied.

To the extent that petitioner intended the document filed on June 10, 2021 (Id.) to serve as an amended petition, it is insufficient for that purpose. The document is not on the habeas petition form for this district. (See Id.) Thus, it does not comply with the court’s June 1, 2021 order (ECF No. 3) or Rule 2(c) of the Rules Governing § 2254 Cases.

JUNE 30, 2021 REQUEST BY PETITIONER

On June 30, 2021, Petitioner also filed a request for El Dorado County Sheriff’s Department “turn over” all petitioner’s property and to “halt unlawful medication” petitioner is purportedly receiving. (ECF No. 7.) This request will be denied as the court cannot consider whether such a request is even appropriate when there is not an operative petition in this action.

Petitioner also asks that “a TITLE 42 SEC 1983 Form” be sent to him. (Id. at 1.) The clerk of court will be directed to send petitioner the requested forms for filing a prisoner seeking to file a civil rights action.

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CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Petitioner's request filed June 10, 2021 (ECF No. 4) is denied;
2. Petitioner's request filed June 30, 2021 (ECF No. 7) is denied;
3. Within thirty days of the date of this order, petitioner shall either dismiss this action or file an amended petition on the habeas petition form for this court;
4. Petitioner is advised that failure to file an amended petition on the proper form will result in a recommendation that this action be dismissed for failure to prosecute and failure to comply with court orders. See E.D. Cal. R. 110; E.D. Cal. R. 183(b); Fed. R. Civ. P. 41; and
5. The Clerk of Court is directed to send petitioner the form for a civil rights complaint by a prisoner.

Dated: August 25, 2021


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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